

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #12	CCRB Case #: 201610231	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/06/2016 3:30 PM	Location of Incident: Front of 151 West 100th Street	Precinct: 24	18 Mo. SOL 6/6/2018	EO SOL 6/6/2018	
Date/Time CV Reported Wed, 12/07/2016 12:49 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 12/13/2016 11:00 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fernando Grace	17339	938604	024 PCT
2. POM Angelo Cupo	27214	945635	024 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Dishea Paschall	4447	939797	024 PCT
2. LT Javier Santos	00000	931972	024 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Fernando Grace	Force: Police Officer Fernando Grace used physical force against § 87(2)(b)	
B.POM Fernando Grace	Force: Police Officer Fernando Grace used physical force against § 87(2)(b)	
C.POM Fernando Grace	Force: Police Officer Fernando Grace used physical force against § 87(2)(b)	
D.POM Angelo Cupo	Force: Police Officer Angelo Cupo used physical force against § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with IAB (log no. 202016-43108) on December 7, 2016, on behalf of his son, § 87(2)(b) § 87(2)(b) (**13 Board Review**). This complaint was received by the CCRB on December 13, 2016.

On December 6, 2016, at approximately 3:30 PM, § 87(2)(b) was on a school bus operated by § 87(2)(b) on the way home from school. At the time of this incident, § 87(2)(b) was involved in an ongoing dispute with the operator of the school bus, § 87(2)(b). On December 6, 2016, § 87(2)(b) and § 87(2)(b) were engaged in a verbal dispute because § 87(2)(b) was standing on the bus while § 87(2)(b) was driving, which is against bus policy. § 87(2)(b) § 87(2)(b) drove to the 24th Precinct stationhouse, and flagged down PO Fernando Grace, who was standing in front of the stationhouse. PO Grace boarded the bus, and approached § 87(2)(b) who was seated in the front quarter of the bus. PO Grace allegedly picked him up from the bus seat and dropped him back down, causing him to hit the back of his head on the bus seat (**Allegation A**), and then allegedly punched him twice in the head (**Allegation B**). PO Grace pulled § 87(2)(b) to the front of the bus, where they met PO Angelo Cupo. PO Grace and PO Cupo pulled § 87(2)(b) off the bus, causing him to fall over the stairs of the bus, and on to the ground (**Allegation C, Allegation D**). This case is being submitted after the 90-day mark because of difficulty in scheduling officer appearances, and delays incurred in subpoenaing testimony from § 87(2)(b) . § 87(2)(g)

A juvenile report was prepared as a result of this incident (**12 Board Review**). § 87(2)(b) was charged with disorderly conduct and harassment.

§ 87(2)(b) provided a cellular phone video depicting the FADO allegation of his ejection from the bus (**01 Board Review**).



201610231_20170622_1600_DM.mp4

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) § 87(2)(b)
- On May 3, 2017, a Notice of Claim Inquiry returned negative results from the NYC Comptroller's Office (**18 Board Review**).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) (**16 Board Review**) and § 87(2)(b) (**15 Board Review**) have been party.
- PO Grace has been a member of service for eleven years, and has four previous allegations against him, with no substantiations. PO Grace has two previous physical force allegations.
- PO Cupo has been a member of service for nine years, and has no previous allegations against him.

Findings and Recommendations

Allegation A –Physical Force: Police Officer Fernando Grace used physical force against

§ 87(2)(b)

Allegation B- Physical Force: Police Officer Fernando Grace used physical force against

§ 87(2)(b)

§ 87(2)(b) (04 Board Review) stated that he got in to a dispute with the operator of his school bus, § 87(2)(b) § 87(2)(b) because he was standing while the bus was in motion. § 87(2)(b) § 87(2)(b) drove the school bus to the 24th Precinct stationhouse, and PO Grace boarded the bus. § 87(2)(b) was seated when PO Grace boarded the bus. PO Grace approached § 87(2)(b) and told him to “sit down.” § 87(2)(b) responded that he was already seated. PO Grace pulled § 87(2)(b) up by the collar of his shirt, and then pushed him back in to the seat, causing him to hit his head against the wall of the bus behind him. As PO Grace was pulling § 87(2)(b) up, § 87(2)(b) told PO Grace to get the “fuck” off him, and tried to push PO Grace’s arm off of him. PO Grace then punched § 87(2)(b) twice, once in the area of his right eye, and once in the area of his right ear.

§ 87(2)(b) medical records show that he complained of being punched in the face by the police (**Privileged Documents**).

Photographs of § 87(2)(b) § 87(2)(b) face, taken by § 87(2)(b) and emailed to the CCRB, do not depict visible injuries to the right area of his face (**Board Review 5, Board Review 6, Board Review 7**).

PO Grace (09 Board Review) stated that prior to boarding the bus, he had no conversation with the bus driver as to what was happening on the bus, and only interacted with the bus driver for seconds before entering. When PO Grace boarded the bus, § 87(2)(b) was standing in the aisle in the middle of the bus. § 87(2)(b) said, “Fuck you, I’m not afraid of you.” PO Grace explained that he had just boarded the bus, and did not know what was going on. PO Grace instructed § 87(2)(b) to get off of the bus, and § 87(2)(b) responded that he was not going to get off the bus. PO Grace approached § 87(2)(b) grabbed one of his arms, and began to pull § 87(2)(b) towards the exit. § 87(2)(b) flailed his arms to prevent PO Grace from walking him off the bus, and pulled back to keep from walking. § 87(2)(b) arms made contact with PO Grace, but the contact was unintentional. PO Grace did not push § 87(2)(b) into a seat on the bus, punch him in the face, or otherwise make contact with § 87(2)(b) head.

PO Grace stated that he did not remember or know what reports were prepared in regards to this incident. PO Grace was shown the Juvenile Report, and acknowledged that he had written it. PO

Grace reviewed the report. It did not refresh his memory any further as to what happened on the bus.

PO Grace prepared a juvenile report and TRI in regards to this incident.

§ 87(2)(b)

Similarly, the TRI (**02 Board Review**) and ISAR (**17 Board Review**) state that § 87(2)(b) threatened PO Grace with force on the bus, but do not say what specifically § 87(2)(b) did, or how PO Grace responded.

PO Cupo (**11 Board Review**) stated that he did not see PO Grace punch § 87(2)(b) or otherwise make contact with his head or face. When PO Cupo initially observed § 87(2)(b) and PO Grace, § 87(2)(b) was seated, and PO Grace was trying to pull him by his arm out of the seat. PO Cupo could not see specifically where PO Grace was making contact with § 87(2)(b) because PO Cupo was standing approximately five feet away, by the front door to the bus, and he was trying to navigate through other students down the aisle towards them, to assist PO Grace. PO Cupo did not see PO Grace punch § 87(2)(b).

Lt. Santos (**10 Board Review**) stated that he entered the bus through the door positioned in the middle of the bus. When he entered the bus, he was approximately ten feet away from PO Grace and § 87(2)(b) from where they were positioned at the front of the bus. Lt. Santos walked down the aisle towards them, and by the time he reached them, PO Grace and § 87(2)(b) were already off the bus, and § 87(2)(b) was on the ground.

§ 87(2)(g)

Allegation C –Physical Force: Police Officer Fernando Grace used physical force against

§ 87(2)(b)

Allegation D –Physical Force: Police Officer Angelo Cupo used physical force against § 87(2)(b)

§ 87(2)(b) (**04 Board Review**) stated that after PO Grace punched him, he pulled him out of the seat, and on to the floor of the bus. Once § 87(2)(b) was on the floor, he screamed at PO Grace to get off of him, and was waving his arms around to prevent PO Grace from approaching him. PO Cupo and Lt. Santos entered the bus. Lt. Santos spoke to the bus driver, and PO Cupo approached § 87(2)(b) and PO Grace. PO Grace and PO Cupo each grabbed one of § 87(2)(b) arms, and walked him to the front exit of the bus, where the door was open. There are three at the entry of the bus. PO Grace and PO Cupo were still holding § 87(2)(b) arms, went to the bottom step closest to the ground, and pulled § 87(2)(b) off the bus, causing him to fall down the stairs and land face first on the pavement outside of the bus.

§ 87(2)(b) medical records show that his chief complaint was of a contusion to his head, and show that he sustained a .5 centimeter circular abrasion on his left temple at his hairline, and a 2 centimeter abrasion to his right ear. He also had dried blood on his right nostril, and an abrasion on his lip. When discharged, he was prescribed an antibiotic ointment (**Privileged Documents**).

The DOE incident report (**08 Board Review**) states that § 87(2)(b) refused to sit down on the bus, and used profanity with the bus aide, § 87(2)(b). The CCRB subpoenaed § 87(2)(b) for testimony by § 87(2)(b) and they were not compliant. In the incident report, § 87(2)(b) wrote that § 87(2)(b) also threatened her and the bus driver, § 87(2)(b) § 87(2)(b) with a broom. § 87(2)(b) § 87(2)(b) pulled over, flagged down a police officer, and the officers “took” § 87(2)(b) with them.

PO Grace (**09 Board Review**) stated that he “dragged” § 87(2)(b) down the aisle of the bus, by facing him, gripping on to his jacket, and walking backwards down the aisle towards the front exit of the bus. § 87(2)(b) began to “jostle,” which caused PO Grace to “drag him harder” for the ten feet between where they were and the exit to the bus.

In his initial narrative, PO Grace stated that when he and § 87(2)(b) reached the top of the stairs at the door of the bus, he “threw” § 87(2)(b) to the ground. PO Grace stated that he could not recall specifically how § 87(2)(b) came to be on the ground, because it all happened very quickly and was a “blur.” PBA Representative Richard Murray then asked PO Grace if he backed off the bus, walked § 87(2)(b) down the stairs, and then immediately placed him on the ground, PO Grace said that was “right,” and that the way he grabbed § 87(2)(b) and pulled him to the ground was “a little aggressive.” § 87(2)(b) was face down on the ground, and began crying when he fell to the ground. PO Grace did not recall what § 87(2)(b) was wearing during the incident, and did not know if § 87(2)(b) shirt came off during the struggle or as a result of his fall to the ground.

PO Grace did not observe any injury to § 87(2)(b). Sgt. Paschall immediately approached § 87(2)(b) when he was on the ground, and began comforting him, and instructed PO Grace to move away. PO Grace returned to his post as stationhouse security.

PO Grace stated that he “knew” § 87(2)(b) had not gone to the hospital. PO Grace was shown the Medical Treatment of Prisoner Report, and acknowledged that he had prepared it, but did not recall § 87(2)(b) being injured, or removed to the hospital.

The TRI (**02 Board Review**) prepared by PO Grace states that § 87(2)(b) was “removed” from the bus and taken to the ground, resulting in a minor laceration to his lip.

PO Grace watched video footage of § 87(2)(b) ejection (**01 Board Review**) from the bus, and did not know what caused § 87(2)(b) to fall. PO Grace identified himself as the officer on the left side of the frame with his hand on § 87(2)(b) arm.

PO Cupo (**11 Board Review**) stated that he boarded the bus at the front exit, and did not have any conversation with the bus driver, or any other adult on the bus. PO Cupo observed PO Grace pull § 87(2)(b) down the aisle of the bus. PO Cupo had been walking down the aisle to assist PO

Grace, but as PO Grace began walking § 87(2)(b) down the aisle, PO Cupo backed up down the aisle towards the front door of the bus. § 87(2)(b) attempted to keep PO Grace from gaining control of him by grabbing on to seats as he passed by them. § 87(2)(b) fell forward down the stairs of the bus, and landed face first on the ground. PO Cupo did not know what caused § 87(2)(b) to fall. PO Cupo did not push § 87(2)(b) down the stairs, or pull him down the stairs. PO Cupo did not see PO Grace push or pull § 87(2)(b) down the stairs.

PO Cupo watched video footage of § 87(2)(b) ejection from the bus and identified himself as the officer on the right side of § 87(2)(b) and PO Grace as the officer on the left side. PO Cupo did not recall if he made contact with § 87(2)(b) as he fell out of the bus. After watching the video, PO Cupo did not know what caused § 87(2)(b) to fall off the bus.

Lt. Santos (**10 Board Review**) stated that he boarded the bus from the middle entrance, and did not have any conversation with the bus driver or any other adult on the bus. When he boarded the bus, Lt. Santos observed PO Grace and § 87(2)(b) at the front of the bus, by the front entrance. There were approximately twelve students between where Lt. Santos was standing, and PO Grace and § 87(2)(b). Lt. Santos walked down the aisle towards PO Grace and § 87(2)(b). By the time he reached the front exit, § 87(2)(b) was on the ground in front of the bus, and PO Grace was off of the bus. Lt. Santos did not see how § 87(2)(b) got off of the bus. Lt. Santos did not make any physical contact with § 87(2)(b). § 87(2)(b) had an abrasion to his face, and was yelling at PO Grace. Lt. Santos instructed PO Grace to move away, in order to deescalate the situation between them.

Sgt. Paschall (**19 Board Review**), the school sergeant, arrived after § 87(2)(b) was ejected from the bus, and did not see how he was ejected from the bus. When Sgt. Paschall first observed § 87(2)(b) he was crying and on the ground, not moving. Sgt. Paschall helped him off the ground, walked him inside, and spoke to § 87(2)(b) on the telephone to inform him that there had been an incident and § 87(2)(b) required medical attention. § 87(2)(b) had an abrasion to his face.

§ 87(2)(g)

According to NYPD Patrol Guide Procedure 221-02, an officer may apply no more than the reasonable force necessary to gain control of an arrestee. De-escalation is defined as “taking action in order to stabilize a situation and reduce the immediacy of the threat so that more time, options, and/or resources become available... The goal is to gain voluntary compliance of the subject, when appropriate and consistent with personal safety, to reduce or eliminate the necessity to use force” (**14 Board Review**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
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[Redacted]
[Redacted]
[Redacted]
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Squad: 12

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date